IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10070 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHEMAJI GANGARAM BRAHMAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Banaskantha, at Palanpur, in exercise of powers under Section 3(1) of the

Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), dated September 4, 1999.

2. The grounds of detention indicate that the detaining authority took into consideration the three offences registered against the petitioner as well as statements of four witnesses. Identity of the witnesses has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority also considered possibilty of resorting to less drastic remedies, but came to conclusion that, considering illegal and anti-social activities of the petitioner, it is necessary to immediately prevent him from pursuing his activities. The detaining authority came to conclusion that detention under PASA Act is the only efficacious remedy that can be resorted to, to immediately prevent the petitioner from pursuing his activities.

3. The detenu has challenged the order of detention by this petition under Article 226 of the Constitution, on various grounds. Learned advocate, Ms. Patel, has placed reliance on the fact that the statements relied upon by the detaining authority have, in fact, been not verified by the detaining authority. They are verified by the Dy.S.P. before the papers were placed before the detaining authority and the detaining authority has simply agreed with the officer. Ms. Patel, therefore, submitted that the detaining authority has exercised powers under Section 9(2) of the PASA Act in absence of a subjective satisfaction for the need for exercise of these powers. This has, therefore, adversely affected the right of the detenu in making an effective representation which would render the detention illegal. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, the detaining authority has relied on the verification by the Dy.S.P. and it is not necessary for the detaining authority to verify the same personally and, therefore, the petition may not be entertained.

5. At the outset, it may be stated that the detaining authority has not filed any affidavit in reply to crease out the doubts raised by the detenu in this petition about the subjective satisfaction and application of mind while exercising powers under Section 9(2) of the PASA Act.

6. The detaining authority, in the grounds of

detention, has recorded that he is personally satisfied about the need for exercise of powers under Section 9(2) of the PASA Act of claiming privilege of not disclosing identity of anonymous witnesses. It is, however, found that the statements are not verified by the detaining authority personally, but they are verified by Dy.S.P., which only states a request by the witness for maintaining anonymity by not disclosing the identity. Whether the fear expressed by the witness is genuine or not is not reflected in the verification by the Dy.S.P. It is also clear from the tenor of the language employed in the grounds of detention that, according to the detaining authority, the detaining authority was subjectively satisfied on verification, whereas, in fact, verification is not done by the detaining authority at all and there is no reference to verification by Dy.S.P. As such, the order suffers from two vices, namely, want of subjective satisfaction and non-application of mind to the extent that there is no reference to verification by the Dy.S.P. by the detaining authority.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 4, 1999 is hereby quashed. The detenu-Bhemaji Gangaram Brahman is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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